
Judiciary Committee

HB 2761

Title: An act relating to money laundering.

Brief Description: Expanding the types of property subject to seizure and forfeiture in money laundering provisions.

Sponsors: Representatives Springer, Rodne, Lantz, Williams and Moeller.

Brief Summary of Bill

- Expands the type of property that may be forfeited under the money laundering forfeiture statute;
- Allows law enforcement to seize personal property without prior judicial process when there is probable cause and an exception to the warrant requirement exists;
- Establishes defenses for innocent owners;
- Allows a claimant who substantially prevails in a forfeiture proceeding to collect reasonable attorney fees;
- Requires that forfeited property be used first to pay for victim restitution and allows the remainder to be used for general law enforcement purposes.

Hearing Date: 1/25/06

Staff: Trudes Tango (786-7384).

Background:

A. Money laundering

A person commits money laundering when he or she conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and the person either: (a) knows the property is proceeds of specified unlawful activity; (b) knows that the transaction is designed to conceal or disguise the nature, location, source, ownership, or control of the proceeds and acts recklessly as to whether the property is proceeds; or (c) knows that the transaction is designed to avoid a transaction reporting requirement under federal law. Additional proof requirements are imposed if the case involves an attorney accepting a fee from a client or a case involving a bank and its employee.

"Financial transaction" is defined broadly and includes a purchase, sale, loan, pledge, gift, transfer, delivery, trade, or any other acquisition or disposition of property by whatever means effected. "Specified unlawful activity" means any class A or B felony, any offense listed as criminal profiteering, or any federal offense or offense committed in another state that is punishable by more than one year in prison.

B. Civil forfeiture

There are various statutes authorizing the government to seize and forfeit property because of the property's connection with specific offenses. In most forfeiture statutes, a conviction is not a prerequisite for civil forfeiture.

Proceeds traceable to or derived from specified unlawful activity or from money laundering are subject to seizure and forfeiture. "Proceeds" means any interest in property directly or indirectly acquired through or derived from an act or omission and any fruits of this interest, in whatever form. "Property" means anything of value, whether real or personal, tangible or intangible.

Real property may only be seized upon process issued by a superior court. Forfeiture proceedings for real property are always judicial, as opposed to administrative. The seizure must include a filing of a lis pendens by the seizing agency to give notice to prospective purchasers that the property's title is unsettled.

Prior judicial action is not always necessary for the seizure of personal property. Law enforcement may seize personal property without prior judicial process if: (a) the seizure is incident to an arrest or a search under a warrant or an inspection under an administrative inspection warrant; or (b) the property subject to seizure was the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

Once the property is seized, the forfeiture proceeding is considered commenced. The law enforcement agency must provide notice of the seizure and intended forfeiture to the owner and any person with a known right or interest, including a community property interest. For cases involving real property, service of notice must be made according to the rules of civil procedure. Notice in all other cases may be by any method authorized by law or court rule including service by certified mail with return receipt requested.

If no person notifies the agency of a claim of right or interest in the property within a specified time after notice is given (45 days for personal property, 90 days for real property), the property is deemed forfeited.

If a person notifies the agency of an interest in the seized property, the person must be given a reasonable opportunity to be heard. For personal property, the hearing is generally before the chief law enforcement officer of the seizing agency or an administrative law judge. However, the person may elect to remove the case to court. The seizing agency has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture.

In addition to commencing a forfeiture proceeding by actual seizure, a proceeding may be commenced by filing a civil action in court. Only the attorney general or county prosecutor may file a civil action in court for forfeiture.

The seizing law enforcement agency must remit 10% of the net proceeds of any property forfeited annually to the state treasurer to be deposited into the violence reduction and drug enforcement

account. The remainder shall be retained by the seizing agency to be used for enforcement of the drug laws.

Washington's drug laws also allow for civil forfeiture of real and personal property associated with illegal drug activity. Those laws contain provisions for, among other things, notice to parties with a security interest in seized property, protections for innocent owners, and attorneys fees for a party who substantially prevails in a forfeiture proceeding.

Summary of Bill:

The kinds of property subject to seizure and forfeiture under the money laundering statute is expanded to include any property that is involved in a transaction or attempted transaction of money laundering, not just proceeds.

The entities who may file an action for forfeiture is expanded to include law enforcement agencies.

Law enforcement may seize personal property without court process if the officer has probable cause to believe that the property is forfeitable and an exception to the constitutional search warrant requirements would apply.

Defenses are established for innocent owners. For a person who had an interest in the property at the time the conduct giving rise to the forfeiture occurred, that interest may not be forfeited if the person shows by a preponderance of the evidence that he or she did not know or consent to the conduct.

For a person who acquired an interest in the property after the conduct giving rise to the forfeiture occurred, that person's interest may not be forfeited if the person shows by a preponderance of the evidence that, he or she was a bona fide purchaser or seller of goods or services and did not know and was reasonably without cause to believe that the property was subject to forfeiture.

For a party with a security interest, the forfeiture of property is subject to that security interest if the secured party shows by a preponderance of the evidence that the security interest is a bona fide security interest and the secured party, at the time the security interest was created, did not know of the acts or omissions that were the basis for the forfeiture.

A claimant who substantially prevails in a forfeiture proceeding is entitled to reasonable attorneys fees reasonably incurred. In a court hearing where two or more claimants are involved, the prevailing party is entitled to costs and reasonable attorney fees.

Forfeited property shall be used first to pay victim restitution, and that amount shall be deducted in determining the net proceeds for purposes of depositing ten percent to the state. Forfeited property retained by the agency shall be used for general law enforcement in purposes, rather than for enforcement of just the drug laws.

Notice provisions are established for parties with perfected security interests in the seized property. Procedures are established for filing orders with the county assessor and auditor when real property is forfeited. Forfeiture proceedings removed from an administrative hearing to court shall be conducted under civil court rules.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.